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In re Application of :  
DETROIT STEEL PRODUCTS CO., INC. :  
U.S. Application No.: 10/049,157 : DECISION ON PETITION  
PCT No.: PCT/US01/14771 :  
Int. Filing Date: 03 May 2001 : UNDER 37 CFR 1.137(a)  
Priority Date: 04 May 2000 :  
For: VEHICLE SUSPENSION SYSTEMS :

This decision is in response to applicant's "Petition For Revival of an Application For Patent Abandoned Unavoidably Under 37 C.F.R. 1.137(a)" filed 01 February 2002 in the United States Patent and Trademark Office (USPTO). Applicant has paid the required petition fee.

**BACKGROUND**

On 03 May 2001, applicant filed international application PCT/US01/14771. A Demand for international preliminary examination, in which the United States was elected, was not filed prior to the expiration of nineteen months from the priority date. Accordingly, the twenty-month period for paying the basic national fee in the United States expired at midnight on 04 January 2002.

On 05 January 2002, the application became abandoned for failure to pay the basic national fee for a U.S. national stage entry application.

On 01 February 2002, applicant filed the present petition accompanied by a "Transmittal Letter to the United States Designated/Elected Office (DO/EO/US) Concerning a Filing Under 35 U.S.C. 371"; payment of the full U.S. Basic National Fee and a declaration executed by the inventor.

**DISCUSSION**

Under 37 CFR 1.137(a), a petition requesting that the application be revived on the grounds of unavoidable delay must be filed promptly after applicant becomes aware of the abandonment, and such petition must be accompanied by: (1) A proper response, unless already filed; (2) The petition fee as set forth in §1.17(l); (3) A showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and (4) A terminal disclaimer (if necessary). Applicant has satisfied items (1) and (2) above; item (4) is not applicable.

Concerning item (3), applicant has not met the burden of proof to show that the abandonment was unavoidable.

The circumstances identified by applicants do not satisfy the exacting standard applied when determining whether the cause of abandonment was unavoidable. As explained in the Manual of Patent Examining Procedures at 711.03(c):

As discussed above, "unavoidable is the epitome of "unintentional" delay. Thus, an intentional delay precludes revival under 37 CFR 1.137(a) ("unavoidable" delay) or 37 CFR 1.137(b) ("unintentional" delay). See *Maldague*, 10 USPQ2d at 1478.

Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.

\* \* \* \* \*

[A] "reasonably prudent person" would file papers or fees in compliance with 37 CFR 1.8 or 1.10 to ensure their timely filing in the USPTO, as well as preserve adequate evidence of such filing, a delay caused by an applicant's failure to file papers or fees in compliance with 37 CFR 1.8 and 1.10 does not constitute "unavoidable" delay.

In the present case, problems with delays in the U.S. mail service to the USPTO in the months of October and November 2001 were well known. Advisories were posted on the USPTO website as early as October 24, 2001 detailing postal service delays caused by increased security procedures related to the discovery of anthrax in a Washington, D.C. postal facility. Accordingly, delays in the mail were foreseeable. In addition, a reasonably prudent person would have filed the Demand in compliance with 37 CFR 1.10 to ensure timely receipt.

Because applicant has failed to satisfy all the requirements for a grantable petition under

37 CFR 1.137(a), this application remains abandoned with respect to the United States.

### CONCLUSION

The petition to revive under 37 CFR 1.137(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(a)."

As an alternative, applicant is advised to consider filing a petition to revive under 37 CFR 1.137(b) for unintentional, rather than unavoidable, delay.

A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional abandonment must be accompanied by (1) the required reply, (2) the petition fee required by law (\$1280.00), (3) a statement that the, "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional." and (4) any terminal disclaimer and fee pursuant to 37 CFR 1.137(c) (where required).

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention to the PCT Legal Office



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